IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10499 & 10789 OF 1998

DATE OF DECISION: 14-12-2005

==========

DN THAKKAR & OTHERS – PETITIONERS
Versus
UNION OF INDIA & ANOTHER

==========

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Petitioners:

MR MS TRIVEDI

For Respondents:

MS PAURAMI B SHETH

==========

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Both these Special Civil Applications are disposed of by this common judgment since common question for consideration arises in both these Special Civil Applications.

==========

Whether Reporters of Local Papers may be allowed to see the judgment?

2. Initial engagement of petitioners was on `short term, contract on assignment basis as casual artists' at various Doordarshan Kendras on 09.08.1985. Through Original Applications Nos. 486 to 492 of 1989, they sought direction against the respondents for regularization. Accordingly, vide judgment dated 30.11.1992, Central Administrative Tribunal (for short `CAT') Ahmedabad Bench, directed the respondents to consider the case of petitioners for regularization. With regard to seniority, question was left to the petitioner to agitate in future.

2. Therefore, respondents issued issued Office Memorandum No.2(3)/86-S1 dated 09.06.1992 framing scheme for regularization of casual artists in Doordarshan. In this scheme, items 3 and 7 may be quoted:-

> "3.Separate eligibility panels will be prepaid for each category of posts, Kendra-wise, depending upon the length of service of Casual Artists. They will be considered for regularization

> in the order of their seniority against the available vacancies in that particular Kendra. The seniority will be determined from the date of their initial engagement by the Kendra.
>
> 4 to 6. xx xx xx
>
> 7. The regularization of Casual Artists would be from a prospective date and the Casual Artists on the eligibility panel who fail to qualify for regularization in accordance with the recruitment rules and instructions issued thereunder for the post, shall be removed from the panel."

3. After seeking regularization, petitioners sought direction against the respondents through Original Application Nos.744, 686 and 745 all of 1994 that they be assigned seniority from the date of initial appointment, namely, 09.08.1995. However, vide order dated 16.04.1998, the claim has been rejected. Consequently, this order is challenged through this Special Civil Applications under Article 226 and 227 of the Constitution of India.

4. Heard learned counsel for the parties.

The main question for determination in this case is whether the petitioners are entitled to seniority from 09.08.1985? We answer this question in the negative. Initial appointment of petitioners was short term, contract on assignment basis as casual artists, meaning thereby they were contractual casual artists. On the basis of directions from the CAT, respondents issued Office Memo dated 09.06.1992 for their regularization. Perusal of paragraphs-3&7 of the scheme quoted above clearly demonstrate that it is a special scheme for regularization of casual artists in the Doordarshan Kendras. This scheme against available vacancies for which the inter-se seniority of these casuals from the date of their engagement is relevant. Further, this regularization is prospective, therefore, does not give them retrospective benefit of regularization and seniority. No statutory rule/instruction/regulation is brought to our notice pointing out that these casual artists could be assigned seniority from the date of

their engagement, which could not be, since that would harm the cause of regularly appointed staff in Doordarshan Kendras. Therefore, this scheme for regularization is special and gives them benefit of regularization prospectively. It does not give them benefit of seniority from initial engagement. This aspect is examined by the CAT in paragraph 12, which reads:

> "We have carefully considered the submissions made by the counsel and also perused the records of the case. The issue in this case is whether the applicants who were inducted in the regular cadre of Clerk Gr.II(LDC) are entitled to add their past services rendered as General Assistants under the Casual Artists Scheme for the purpose of claiming seniority. The applicants who were declared surplus as General Assistants have been sympathetically considered and sought to be inducted in the regular grade of Clerk Gr.II (Now LDC). It is an accepted principle that for the purpose of seniority in a grade, a person appointed in the grade will be entitled

to seniority only from the date of regular appointment in that grade. The Ministry of I&B in their letter dated 15.11.94 has specifically considered this issue and clarified as follows:-

> "Regularization of casual General Assistant as Clerk Grade-II shall be from a prospective date after completion of pre-appointment formalities. Their Seniority in the grade of Clerk Grade-II will be counted from the date of regular appointment in that grade. However, inter-se seniority position among the General Assistants regularised as Clerk Grade-II in a particular Kendra-Office shall be based on their inter-se position in the eligibility panel prepared for regularisation."

We are in full agreement with the clarification given by the Ministry of I&B. The period of casual service rendered as General Assistants under the staff artists scheme, in the facts and circumstances, cannot be counted when they are inducted into the regular cadre of LDCs in the Gujarat zone of All India Radio/Doordarshan."

5. We are in agreement with the conclusions drawn by CAT, therefore, there is no justification to interfere in the order.

Consequently, there is no merit in these petitions, therefore, they are dismissed. Rule is discharged.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

[sn devu] ps